

ESTTA Tracking number: **ESTTA475285**Filing date: **05/30/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Indigo Studios, Inc.		
Entity	Corporation	Citizenship	United States
Address	660 11th Street, NW Atlanta, GA 30318 UNITED STATES		

Attorney information	Alan S. Clarke, Esq. Law Offices of Alan S. Clarke, LLC Suite 750 3355 Lenox Road Atlanta, GA 30326 UNITED STATES alansclarke@bellsouth.net Phone:4048169800
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Registration Subject to Cancellation

Registration No	3643274	Registration date	06/23/2009
Registrant	THE CONCENTRATE MANUFACTURING COMPANY OF IRELAND CORNER HOUSE, 20 PARLIAMENT STREET HAMILTON, BERMUDA		

Goods/Services Subject to CancellationClass 032. First Use: 2004/01/01 First Use In Commerce: 2004/01/01
All goods and services in the class are cancelled, namely: Soft drinks**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Attachments	Cancellation Petition and Exhibits0001.pdf (13 pages)(3815128 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Alan S. Clarke/
Name	Alan S. Clarke, Esq.
Date	05/30/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark Registration No. 3,643,274 for the mark: MISCELLANEOUS
DESIGN, Date registered June 23, 2009

INDIGO STUDIOS, INC., Petitioner

v.

THE CONCENTRATE MANUFACTURING COMPANY)
OF IRELAND, Respondent)

)
)
) Cancellation No. _____
)

PETITION TO CANCEL

Indigo Studios, Inc., a Georgia Corporation located at 660 11th Street, NW, Atlanta,
Georgia 30318.

To the best of petitioner's knowledge, the name and address of the current owner of the
registration is The Concentrate Manufacturing Company of Ireland, located at Corner House, 20
Parliament Street, Hamilton, Bermuda.

The above-identified petitioner believes that it has been and will continue to be damaged
by the above-identified registration, and hereby petitions to cancel the same. The grounds for
cancellation are as follows:

1.

Petitioner Indigo Studios, Inc. is one of the United States' premier production studios.
Operating in Atlanta, Georgia since 1996, Petitioner provides fully integrated print, motion and
interactive visual creation and production services to its clients, which have included Miller-
Coors, Coca-Cola, Hasbro, Caterpillar, Discovery Channel, Ford Motor Company and AT&T.

2.

In 1999, Petitioner's employee Gary Cooley created three (3) original works of visual art as a work for hire for Petitioner which Petitioner used to demonstrate rough advertising concepts to one of its clients without charge ("comps"). The works were cartoon drawings of a distinctive green cat having human attributes, and were entitled "Kool Kat art"; they are attached as Exhibit A. One of the three drawings showed the cat with its arms crossed and wearing sunglasses (the "Indigo Cat").

3.

The Kool Kat art was not used by Petitioner's client, and Petitioner retained all rights to it. In or about 2002 Petitioner's representatives posted two (2) images from the Kool Kat art on their website as "stock images" for licensing by Petitioner's customers. One of these images was the Indigo Cat. The webpage is clearly marked with a copyright notice, and provides Petitioner's contact information for prospective licensees of the work. The webpage offering Kool Kat art for licensing is located at http://www.indigostudios.com/stock/illus_0055.shtml, and a screen shot of the page is attached as Exhibit B, along with a screen shot of the licensing information and copyright notice which appear when interested website visitors click on the Indigo Cat.

4.

Petitioner registered the copyright of the Kool Kat art with the United States Copyright Office, Registration number VA0001794201.

5.

On or about October 6, 2011, a representative of Petitioner purchased a Cream Soda "Jamaica Sof [sic] Drink" from a Publix grocery store in Atlanta, Georgia. The label prominently features the Mark. The Mark is actually the Indigo Cat, with a bottle and straw

added in the cat's arms (with the cat's lip curled up where the straw enters). The Indigo Cat was not otherwise altered in any way to create the Mark. A photograph of the "Sof Drink" bottle and a photograph of a soda dispenser evidencing Respondent's use of the Mark, are attached as Exhibit C, along with a screenshot of the webpage jamaicadrinks.com/product_dg.htm. The webpage clearly shows that the Mark is simply the Indigo Cat with a bottle and straw added, and it is prominently featured as a brand identifier.

6.

Subsequent research has revealed that the Mark, and thus the Indigo Cat, is being used as the brand identifier of D&G (Desnoes & Geddes) Jamaica Sof Drink products, and is prominently featured on all of their plastic and glass bottles as well as in advertising.

7.

Petitioner has discovered that Caribbean Flavors, Ltd. filed for registration of the Mark on November 28, 2008 with first use "at least as early as 01/01/2004." This was two (2) years after Petitioner posted the Kool Kat art on its website. Less than six (6) months later, Caribbean Flavors, Ltd. assigned the trademark to The Central America Bottling Corporation pursuant to a Subscription and Share Exchange Agreement dated as of May 16, 2009. According to the Current Owner Information filed with the U.S. Patent and Trademark Office, the Mark has been transferred to Respondent.

8.

No license, assignment or transfer document has ever been proposed or executed with Petitioner, and Respondent never obtained the rights to use Petitioner's artwork in association with Respondent's goods. Respondent appropriated Petitioner's rights in its intellectual property

without its consent and commercially exploited them as alleged herein without ownership, right or license, and has benefited from their use. Respondent's use of the work without payment to Petitioner has deprived Petitioner of income from its intellectual property.

9.

Petitioner hereby petitions for cancellation of the Mark on the grounds that it was obtained by fraud. A petition to cancel filed prior to the expiration of the five-year period from registration may be based on any ground which could have prevented registration initially. As permitted by Section 14(3) of the Act, 15 U.S.C. §1064(3), a petition to cancel may be filed at any time on the grounds that the registration was obtained by fraud.

10.

Respondent is not (and was not, at the time of the filing of its application for registration) the rightful owner of the registered mark.

11.

The registration sought by respondent is sought to be cancelled in whole.

12.

Petitioner has standing to file a complaint, and has a real, direct and personal interest in the proceeding.

13.

Petitioner has been and continues to be damaged, as its work is being used for commercial gain by respondent without payment.

This 30th day of May, 2012.

By: /Alan S. Clarke/
Alan S. Clarke
Attorney for Petitioner
Georgia Bar No. 128225

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EXHIBIT A



EXHIBIT

INDIGO STOCK

ILLUSTRATION PHOTOGRAPHY

CREATIVE IMAGE COLLECTION

HOME RETURN TO INDIGO STUDIOS



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STOCK ORDER INFO

FOR LICENSING
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QUOTES, PLEASE
CALL OUR STAFF
AT 877.272.2540
MARC@INDIGOSTUDIOS.COM

illus_0055

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EXHIBIT C



Sof Drink®

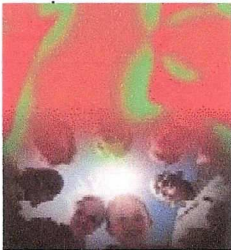
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12oz Glass
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innovations in D&G
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flavours



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BEAT THE HEAT

Multiply flavours of the refreshing, one of a kind taste Jamaican Soft drink. With our many flavours we ensure that no taste bud goes unsatisfied. When in Jamaica D&G Sodas are a must to cool down!.. [read the D&G Story](#)

Bottling Container	FLAVOURS
12 oz Glass	Cola-Champagne Cream Soda Fruit Punch Orange
20 oz	

